Supreme Court, U.S.
FILED
MAY 6 2002
CLERK

No. 01-896

IN THE

# Supreme Court of the United States

FORD MOTOR COMPANY and
CITIBANK (SOUTH DAKOTA), N.A.,

*Petitioners.*

*v.*

JOHN B. McCAULEY, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF OF *AMICUS CURIAE* STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY IN SUPPORT OF PETITIONERS

SHEILA L. BIRNBAUM
*Counsel of Record*
DOUGLAS W. DUNHAM
ELLEN P. QUACKENBOS
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
*Attorneys for Amicus Curiae*
Four Times Square
New York, NY 10036
(212) 735-3000

173876

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## TABLE OF CONTENTS


| | Page |
|---|---|
| Table of Cited Authorities | iii |
| Interest of *Amicus Curiae* | 1 |
| Summary of the Argument | 3 |
| Argument | 5 |
| I. The Ninth Circuit's Decision Improperly Bars from Federal Court Cases Between Citizens of Different States Where Substantial Pecuniary Interests Are Directly at Stake | 5 |
| A. The Ninth Circuit's Rule Fails to Gauge Accurately the Amount Actually at Stake When Injunctive Relief Is Sought and Is Contrary to 28 U.S.C. § 1332 | 5 |
| B. Valuing Injunctive Relief from the Viewpoint of the Defendant Does Not Contravene This Court's Decisions in *Zahn* and *Snyder* | 12 |
| C. The Potential for Manipulation of the Value of Injunctive Relief Is Exaggerated by the Ninth Circuit and Does Not Justify the Result in This Case | 16 |

*Contents*


| | Page |
|---|---|
| II. The Ninth Circuit's Ruling Is Counter to Strong Federal Interests in Fostering and Protecting Interstate Commerce ..... | 19 |
| Conclusion ..... | 26 |




## TABLE OF CITED AUTHORITIES


| | Page |
|---|---|
| **Cases:** | |
| *Amerada Hess Corp. v. Department of Interior*, 170 F.3d 1032 (10th Cir. 1999) ..... | 16 |
| *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) ..... | 23 |
| *Barrow S.S. Co. v. Kane*, 170 U.S. 100 (1898) .... | 19 |
| *Bigelow v. Virginia*, 421 U.S. 809 (1975) ..... | 24 |
| *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970 (5th Cir. 2000) ..... | 17 |
| *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599 (7th Cir. 1997) ..... | 13 |
| *Brazos v. Electric Power Cooperative, Inc.*, 144 F.3d 784 (Fed. Cir. 1998) ..... | 17 |
| *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986) ..... | 24 |
| *Campbell v. General Motors Corp.*, 19 F. Supp. 2d 1260 (N.D. Ala. 1998) ..... | 16 |
| *In re Cardizem CD Antitrust Litig.*, 90 F. Supp. 2d 819 (E.D. Mich. 1999) ..... | 13 |

*Cited Authorities*


| | Page |
|---|---|
| *In re Cordis Corp. Pacemaker Product Liability Litigation*, No. MDL 850, C-3-86-543, 1992 WL 754061 (S.D. Ohio Dec. 23, 1992) | 17 |
| *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792 (11th Cir. 1999) | 20 |
| *Earnest v. General Motors Corp.*, 923 F. Supp. 1469 (N.D. Ala. 1996) | 13 |
| *Edgar v. MITE Corp.*, 457 U.S. 624 (1982) | 24 |
| *Edge v. Blockbuster Video, Inc.*, 10 F. Supp. 2d 1248 (N.D. Ala. 1997) | 14 |
| *Elmco Props., Inc. v. Second National Federal Savings Association*, 94 F.3d 914 (4th Cir. 1996) | 17 |
| *Federal Trade Commission v. Travelers Health Association*, 362 U.S. 293 (1960) | 23 |
| *In re Ford Motor Co./Citibank (South Dakota), N.A. Cardholder Rebate Program Litigation*, 264 F.3d 952 (9th Cir. 2001) | 6, 7, 9, 13, 16, 18, 19 |
| *Gibbs v. Buck*, 307 U.S. 66 (1939) | 14 |
| *Guaranty Trust Co. of New York v. York*, 326 U.S. 99 (1945) | 12, 21, 22 |




*Cited Authorities*


| | Page |
|---|---|
| *Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989) | 23 |
| *Hoffman v. Vulcan Materials Co.*, 19 F. Supp. 2d 475 (M.D.N.C. 1998) | 6, 8 |
| *Hunt v. Washington State Apple Commission*, 432 U.S. 333 (1977) | 9 |
| *Justice v. Atchison, Topeka & Santa Fe Railway Co.*, 927 F.2d 503 (10th Cir. 1991) | 14 |
| *Loizon v. SMH Societe Suisse de Microelectronics, et Horologerie*, 950 F. Supp. 250 (N.D. Ill. 1996) | 14 |
| *McCoy v. Erie Insurance Co.*, 147 F. Supp. 2d 481 (S.D. W. Va. 2001) | 9, 10, 14, 15, 22 |
| *McIntire v. Ford Motor Co.*, 142 F. Supp. 2d 911 (S.D. Ohio 2001) | 17 |
| *In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp. 2d 702 (D. Md. 2001) | 11 |
| *Motorola, Inc. v. Perry*, 917 F. Supp. 43 (D.D.C. 1996) | 17 |
| *New York Life Insurance Co. v. Head*, 234 U.S. 149 (1914) | 24 |

*Page*

*Pease v. Peck*, 59 U.S. (18 Howe) 595 (1856) .... 20

*In re Prudential Insurance Co. of America Sales Practices Litigation*, 148 F.3d 283 (3d Cir. 1998) ..... 21

*Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604 (10th Cir. 1940) ..... 6

*Snyder v. Harris*, 394 U.S. 332 (1969) .....12, 15

*Steinberg v. Nationwide Mutual Insurance Co.*, 91 F. Supp. 2d 540 (E.D.N.Y. 2000) ....10, 11, 15, 22

*Thomson v. Gaskill*, 315 U.S. 442 (1942) ..... 9

*Zahn v. International Paper Co.*, 414 U.S. 291 (1973) .....12, 14, 15

**Statutes:**

15 U.S.C. § 1011 ..... 22

28 U.S.C. § 1332 .....3, 5, 7, 20



*Page*

**Other Authorities:**

John H. Beisner & Jessica Davidson Miller, *They're Making a Federal Case Out of it . . . in State Court*, 25 Harv. J.L. & Pub. Policy 143 (2002) .....18, 24, 25

The Federalist No. 80 (Alexander Hamilton) ..... 19

John P. Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Probs. 3 (1948) ..... 26

Brittain Shaw McInnis, *The $75,000.01 Question: What is the Value of Injunctive Relief?*, 6 Geo. Mason L. Rev. 1013 (1998) ..... 8

1 James Wm. Moore, *Moore's Federal Practice*, ¶ 0.91(1), at 846 (1st ed. 1978) ..... 5, 6

## INTEREST OF *AMICUS CURIAE* [1]

*Amicus curiae* State Farm Mutual Automobile Insurance Company ("State Farm") is one of the largest automobile insurance companies in the United States and does business nationwide. State Farm believes that this brief will assist the Court by providing perspective on the significant detrimental impact that the decision below, if allowed to stand, will have on the insurance industry and on the ability and authority of each State to regulate the business of insurance within its own borders.

In recent years, large insurance companies like State Farm that are engaged in the business of insurance nationwide or in multiple states have faced a marked increase in class action lawsuits, involving putative or certified multi-state or nationwide classes. In these lawsuits, plaintiffs often seek injunctive relief on a class-wide basis that, if granted, may necessitate a fundamental alteration in an insurance company's business operations, requiring changes to computer systems, employee training, and numerous other costs and expenses.

Such suits can be particularly costly to insurance company defendants because of the need for insurance companies to comply with the varying regulatory systems of the different states. Thus, the costs to insurance companies of complying with injunctions may include costs associated

[1] Counsel for a party did not author this brief in whole or in part, and no person or entity, other than the *amicus curiae*, or its counsel, has made a monetary contribution to the preparation or submission of the brief. The parties have consented to the filing of this brief and copies of those consents have been lodged with the Court.

with attempting to make sure that alterations in the companies' operations resulting from court-ordered injunctive relief comport with the applicable state statutes and regulations in each affected jurisdiction. Accordingly, the cost for insurance companies of complying with an injunction in a large class action may well be far in excess of the jurisdictional minimum even if measured by the cost of compliance with respect to a single plaintiff.

The issues raised by injunctive relief sought in class actions against insurance companies, however, go beyond concerns for expenses and costs, but raise constitutional concerns basic to this Nation's federal system. When a single state court judge, elected by the voters of a single county, adjudicates the claims of a nationwide class of policyholders, there is a serious risk that the resulting judgment may impinge upon the prerogative of other states to regulate the business of insurance within their own borders, particularly if the relief granted includes injunctive relief that will affect the defendant insurer's future operations. Such nationwide injunctive relief not only may impose tremendous compliance costs, but also threatens to expose insurance companies to conflicting legal obligations under the differing regulatory systems of the different states.

Accordingly, the issue presented by this case is of major interest to State Farm as a nationwide insurance company, because of the particular impact this Court's decision will likely have on class action litigation involving insurance practices and because of the special costs imposed upon insurance companies in complying with injunctions, given the varying regulatory regimes of the different states.



## SUMMARY OF THE ARGUMENT

The decision by the United States Court of Appeals for the Ninth Circuit in this case should be reversed. The Ninth Circuit held that, with only a very narrow exception, a defendant's cost of compliance with injunctive relief sought by the plaintiffs in a class action may not be included in determining the amount in controversy under 28 U.S.C. § 1332. The narrow exception permitted by the Ninth Circuit improperly limits consideration of a defendant's costs of compliance to the relatively tiny category of cases where the underlying claims of the named plaintiffs and class members are common and undivided claims for a limited fund or indivisible res. Contrary to the Ninth Circuit's ruling, whether a claim for injunctive relief is common and undivided (and therefore properly assessed from the defendant's viewpoint) should depend upon the nature of the injunctive relief sought and the character of the plaintiffs' interest in that relief. The Ninth Circuit's ruling is not supported by the language of Congress' grant of diversity jurisdiction to the federal courts in 28 U.S.C. § 1332 and subverts the purposes of Congress' grant of diversity jurisdiction to the federal courts.

The rule adopted by the Ninth Circuit, precluding consideration of a defendant's cost of complying with injunctive relief, will almost invariably result in an artificially low amount in controversy. If allowed to stand, this rule will deprive insurance companies and other corporate defendants of their right to remove to federal court class actions in which they would be required to spend far more than the $75,000 jurisdictional threshold if the injunctive relief sought by the plaintiffs were granted. Moreover, the Ninth Circuit's ruling will deprive such defendants of a federal forum even where the cost of implementing injunctive relief for a single named plaintiff would meet the jurisdictional minimum.

Although the Ninth Circuit states that its rule is intended to keep "trivial" cases out of federal court, the instant case and many of the other cases that will be barred from federal court under the Ninth Circuit's rule are important commercial cases in which substantial monetary amounts are put at stake through the plaintiffs' broad claims for programmatic injunctive relief. Federal diversity jurisdiction and the right of diverse defendants to remove such cases continue to play important roles in protecting out-of-state commercial defendants from bias and in ensuring confidence by business and investors in fair judicial processes. In the case of multi-state or national class actions, federal diversity jurisdiction also serves the federal interest in regulating interstate commerce and in ensuring that states do not intrude on other states' interest in regulating conduct within their own borders.

Such considerations of state sovereignty, comity, and the needs of our Nation's federal system are particularly important in the context of insurance. Both this Court and the United States Congress have recognized that, under this country's federal constitutional system, it is uniquely the prerogative of each state to regulate the business of insurance within its borders. For insurance companies, and for other corporate defendants, the Ninth Circuit's rule threatens to undermine the basic constitutional concerns that underlie the concept of diversity jurisdiction. Permitting the exercise of diversity jurisdiction in cases where costly injunctive relief is sought is necessary to help ensure that out-of-state corporate defendants are safeguarded from the potential biases and overreaching of state court proceedings. For these reasons and the reasons set forth below, State Farm respectfully submits that the Ninth Circuit's decision is erroneous as a matter of law and policy and should be overturned by this Court.



## ARGUMENT

### I. The Ninth Circuit's Decision Improperly Bars from Federal Court Cases Between Citizens of Different States Where Substantial Pecuniary Interests Are Directly at Stake

Section 1332, 28 U.S.C. § 1332, grants jurisdiction to the federal courts over all civil actions between citizens of different states where the "matter in controversy" exceeds the sum or value of $75,000. The Ninth Circuit's ruling that the "matter in controversy" may not include the defendant's costs of compliance with injunctive relief sought by plaintiffs is inconsistent with the language of section 1332, as elucidated by this Court and the lower federal courts. The Ninth Circuit's ruling also ignores the economic reality of the amount that may be put in controversy by a claim for injunctive relief and disserves the purposes and policies furthered by federal diversity jurisdiction.

#### A. The Ninth Circuit's Rule Fails to Gauge Accurately the Amount Actually at Stake When Injunctive Relief Is Sought and Is Contrary to 28 U.S.C. § 1332

By requiring a minimum amount in controversy, Congress sought to limit diversity jurisdiction to substantial controversies. A rule that measures the value of injunctive relief only from the viewpoint of the plaintiff, while providing simplicity, may in many cases fail to recognize "the realities of the magnitude of the controversy." 1 James Wm. Moore, *Moore's Federal Practice*, ¶ 0.91(1), at 846 (1st ed. 1978) (as quoted in *McCarty v. Amoco Pipeline Co.*, 595 F.2d 389, 394 (7th Cir. 1979)). "Since the jurisdictional amount

prerequisite was enacted primarily to measure substantiality of the suit, the question of whether the controversy is substantial should not be answered unqualifiedly by looking only to the value of that which the plaintiff stands to gain or lose." *Id.* The Ninth Circuit's ruling, greatly restricting the circumstances in which the cost to the defendant of injunctive relief may be counted toward the jurisdictional minimum in class actions, will keep trivial cases out of the federal courts, but only "by also keeping out cases where great sums of money are involved on the part of the defendant, but not the plaintiff." *See Hoffman v. Vulcan Materials Co.*, 19 F. Supp. 2d 475, 480 (M.D.N.C. 1998).

The "either viewpoint" test, which measures the amount in controversy from either the defendant's viewpoint or from the plaintiff's, better distinguishes large cases from small and thus better effectuates the purposes of the amount-in-controversy requirement. Under the "either viewpoint" rule, "[i]n determining the matter in controversy, [the court] may look to the object sought to be accomplished by the plaintiffs' complaint; the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606 (10th Cir. 1940) (footnote omitted).

The present case raises in particular the question of how the value of injunctive relief should be measured where the plaintiffs bring suit on behalf of a putative class, rather than individually. The Ninth Circuit in this case recognized the validity in individual litigation of measuring the value of an injunction from either the plaintiff's or the defendant's viewpoint,[2] but created a rule that essentially nullifies the "either

[2] *See In re Ford Motor Co./Citibank (South Dakota), N.A. Cardholder Rebate Program Litig.*, 264 F.3d 952, 958 (9th Cir. 2001) (Cont'd)



viewpoint" rule for measuring the value of injunctive relief in class actions. In class actions, the Ninth Circuit's rule limits the use of the "either viewpoint" rule to those rare cases where plaintiffs' underlying claims "involve a single indivisible res, such as an estate, a piece of property (the classic example), or an insurance policy." *In re Ford Motor Co./Citibank (South Dakota), N.A. Cardholder Rebate Program Litig.*, 264 F.3d 952, 959 (9th Cir. 2001). The Ninth Circuit's rule, if upheld, will mean that in all other cases the pecuniary value of injunctive relief would be the pro rata value to a single class member. In a large class action, that pro rata amount will in virtually every case fail to satisfy the amount in controversy despite the magnitude of compliance costs for the defendant.

The Ninth Circuit's rule is not consistent with the language of section 1332, which neither expressly nor impliedly requires injunctive relief to be measured from the viewpoint of a particular party. Rather, section 1332, granting jurisdiction in all civil actions in which the "matter in controversy" "between" citizens of different States "exceeds the sum or value of $75,000," suggests that matter in controversy between the parties should be defined broadly and take into account both viewpoints or either viewpoint in order to reach a determination that accords with the economic realities. As one commentator has stated:

> [T]he either viewpoint rule is more in line with the plain language of the diversity statute. Section 1332

(Cont'd)

(citing *Ridder Bros. Inc. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944) (stating "'the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce'"; "where the value of a plaintiff's potential recovery . . . is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes").

does not contain any language instructing courts as to which party's viewpoint should control the amount in controversy. Critically, it does not state that it should be from the plaintiff's viewpoint. Instead, the statute's central unit of analysis for purposes of determining the jurisdictional amount is drafted in broad terms, "the matter in controversy." . . . [T]his unit of analysis has been interpreted by the Supreme Court to mean "the object of the litigation," that is, what result a judgment will effect. Congress' choice to anchor the amount in controversy to a more general unit of analysis such as the matter in controversy suggests that it did not intend to limit jurisdiction only to cases where plaintiff's alleged value of the claim meets the jurisdictional amount. Thus, the either viewpoint rule mirrors the flexibility inherent in the statute's language.

Brittain Shaw McInnis, *The $75,000.01 Question: What is the Value of Injunctive Relief?*, 6 Geo. Mason L. Rev. 1013, 1031 (1998) (footnotes omitted).

A more pragmatic and flexible approach, in contrast to the rigid rule adopted by the Ninth Circuit in the instant case, would "take into account both the factual variances and the numerous types of relief" and recognize "that any one case may be legitimately valued in a number of different ways, no one of which may be said to inherently represent true value in every case." *Hoffman,* 19 F. Supp. 2d at 481. Thus, "[n]o one economic analysis will be right for all cases." *Id.* at 482. Such an approach would be in accord with this Court's decisions stating that "the amount in controversy is measured by the value of the object of the litigation" and



that, generally, the value is measured by the "pecuniary consequences to those involved in the litigation." *Hunt v. Wash. State Apple Comm'n*, 432 U.S. 333, 347 (1977); *Thomson v. Gaskill*, 315 U.S. 442, 447 (1942).

In the instant case, the Ninth Circuit specifically refused to consider the defendants' cost of complying with the injunctive relief at issue, even though "while the monetary benefit to an individual plaintiff of reinstating the rebate accrual program would be relatively insubstantial, the fixed costs to Ford and Citibank of reinstating and maintaining the program would be the same whether it is done for one plaintiff or for six million." *Ford*, 264 F.3d at 960. The court did not question the factual accuracy of the defendants' assertions as to the cost of compliance, but reasoned that "[i]f the argument were accepted, and the administrative costs of complying with an injunction were permitted to count as the amount in controversy, 'then every case, however trivial, against a large company would cross the threshold.'" *Id.* (citation omitted). Thus, according to the Ninth Circuit, counting compliance costs toward the amount in controversy would be "fundamentally violative of the principle underlying the jurisdictional amount requirement — to keep small diversity suits out of federal court." *Id.* The Ninth Circuit's reasoning ignores the real, substantial costs that are at issue in the instant case and in similar cases and, as discussed below, exaggerates the possibilities for manipulation of the amount in controversy.

Insurance companies in particular may face compliance costs that far outweigh the value of the injunctive relief to a particular plaintiff. As courts have recognized, injunctive relief in the insurance context can, if granted, "require the defendant to alter his method of doing business." *McCoy v.*

*Erie Ins. Co.*, 147 F. Supp. 2d 481, 492 (S.D. W. Va. 2001). In *McCoy*, the plaintiff sought money damages allegedly due her under her automobile insurance policy for the diminished value of her automobile after repairs paid for by the insurance company defendant. The purported diminished value was well under the jurisdictional minimum. The plaintiff, however, also sought prospective relief in the form of an injunction requiring the insurer to "develop[] procedures and systems with regard to such first-party claims for diminished market value" that would have necessitated "hir[ing] two or more additional appraisers in West Virginia for the purpose of adjusting the diminished value aspect of first-party claims." *Id.* at 493. "Each appraiser would have to be paid a salary and benefits, and would have to be provided with a vehicle for use in extensive company-related travel." *Id.* The court concluded that the compliance cost for the defendant if the injunctive relief sought were granted "would well exceed the jurisdictional minimum." *Id.* at 493.

Similarly, in *Steinberg v. Nationwide Mutual Insurance Co.*, 91 F. Supp. 2d 540 (E.D.N.Y. 2000), the court denied plaintiffs' motion for remand, finding that the amount in controversy was satisfied where plaintiffs sought on behalf of themselves and a putative nationwide class both compensatory damages and prospective injunctive relief prohibiting the defendant insurance company from specifying the use of remanufactured parts in the repair of its insureds' vehicles and from imposing "betterment" charges where the repair resulted in an increase in value. *See id.* at 544. While the court held that the compensatory damage claims could not be aggregated for purposes of determining the amount in controversy, the court found that the "economic impact" of the requested injunction on the defendant amounted to "'millions of dollars annually'" and more than satisfied the



jurisdictional minimum. *Id.* (citing Pl.'s Compl.); *see also In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp. 2d 702, 718 (D. Md. 2001) (jurisdictional minimum satisfied where defendant had "established that redesigning its operating system software in order to comply with the injunctions requested in each of the removed cases would cost millions of dollars").

In nearly every state, insurance companies are subject to detailed and comprehensive regulations that govern their obligations toward policyholders. Thus, compliance with an injunction affecting those obligations can carry with it substantial associated regulatory costs, in addition to the computer, administrative, personnel and training costs and many other expenses. In cases where plaintiffs assert claims on behalf of a nationwide or multi-state class, the cost of compliance for an insurance company will likely be even more substantial because of variations in state insurance laws and regulations. *See supra* at 1-2. In addition, the costs and constraints imposed upon an insurance company by injunctive relief may potentially have a serious detrimental effect upon the company's ability to compete in interstate commerce against other insurance companies that are not subject to the terms of the injunction.

If the Ninth Circuit's rule is not overturned, courts in many class actions will simply ignore the actual, substantial costs for defendant corporations engaged in interstate commerce of complying with large-scale programmatic injunctive relief. State Farm submits that those costs should appropriately be counted in determining whether the amount in controversy is met. Indeed, permitting the exercise of diversity jurisdiction over cases in which costly injunctive relief is sought is essential to ensure that out-of-state

corporate defendants are protected from the potential biases of state court proceedings. *See Guaranty Trust Co. of N.Y. v. York*, 326 U.S. 99, 111-12 (1945) ("[d]iversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias").

### B. Valuing Injunctive Relief from the Viewpoint of the Defendant Does Not Contravene This Court's Decisions in *Zahn* and *Snyder*

The result reached by the Ninth Circuit is not compelled by the non-aggregation rule articulated by this Court in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), and *Snyder v. Harris*, 394 U.S. 332 (1969). Neither of those two decisions addressed the issue of how to calculate in a class action the amount put into controversy by a request for injunctive relief. Rather, in those decisions, this Court held that individual monetary damages requested by plaintiffs and class members could not be aggregated for purposes of determining the amount in controversy. *Zahn*, 414 U.S. at 301; *Snyder*, 394 U.S. at 1056-57. Except where compliance costs merely duplicate the cost of paying individual damages to each plaintiff or class member, taking the defendant's cost of compliance into account in determining the amount in controversy is not contrary to the non-aggregation rule of *Zahn* and *Snyder*.

Courts that have taken a class action defendant's cost of complying with an injunction into account for purposes of determining the amount in controversy have harmonized that result with *Zahn* in a number of different ways. Certain courts, such as the Seventh Circuit, have postulated the "one plaintiff" rule. Under the "one plaintiff" rule, where the cost of compliance with regard to one plaintiff would exceed



$75,000, the jurisdictional amount was satisfied, even if the cost of compliance would be the same for one plaintiff or for the entire class. *See In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599 (7th Cir. 1997). As the Ninth Circuit concedes, the present case meets the "one plaintiff" test. The proposed injunction would require the defendants to alter their method of doing business by reinstating and administering a rebate accrual program under the Ford/Citibank credit card. *Ford*, 264 F.3d at 958. It is undisputed that the cost of doing so would far exceed the jurisdictional amount regardless of whether that relief were provided to just one plaintiff or to the entire class.

Other courts have applied a less restrictive version of the "common and undivided interest" test. Rather than requiring that the plaintiffs' claims be based upon a common fund or other indivisible res (as the Ninth Circuit did in the instant case), these courts have formulated a rule whereby if the injunctive relief would "benefit the putative class as a whole and not just any individual plaintiff," the class would be considered to have a common and undivided interest in the injunctive relief sought. *Earnest v. Gen. Motors Corp.*, 923 F. Supp. 1469, 1472 (N.D. Ala. 1996) (class had undivided interest in injunctive relief in the form of advertising campaign, comprehensive vehicle recall, and injunction forbidding the defendants from using allegedly defective engines and engine control modules); *see also In re Cardizem CD Antitrust Litig.*, 90 F. Supp. 2d 819, 836 (E.D. Mich. 1999) ("Plaintiffs seek injunctive relief that will benefit the class as a whole. Defendants' costs of compliance do not depend upon the size of the class or the identity of its members. Accordingly, it is based upon a common and undivided interest and constitutes an integrated claim; its entire value may be considered when determining whether

the amount-in-controversy requirement for diversity jurisdiction is satisfied"); *Edge v. Blockbuster Video, Inc.*, 10 F. Supp. 2d 1248, 1254-56 (N.D. Ala. 1997) (injunction that would prohibit "course of conduct as a whole" and would inure to the "collective good" of the class was common and undivided and should be valued from defendant's viewpoint for purposes of the amount in controversy); *Loizon v. SMH Societe Suisse de Microelectronics, et Horologerie*, 950 F. Supp. 250, 253-54 (N.D. Ill. 1996) (finding that class members had common and undivided interest in injunctive relief because "[i]n this case only the class, and not the individual class members, could request the injunctive relief"). These courts have properly recognized that certain class rights to injunctive relief can only be pursued as a class and that the class members should be considered to have a common and undivided interest in such relief.[3]

Still other courts have simply seen the non-aggregation rule set forth in *Zahn* as inapplicable to valuing injunctive relief. For example, in *Justice v. Atchison, Topeka & Santa Fe Railway Co.*, 927 F.2d 503 (10th Cir. 1991), the Tenth Circuit acknowledged that the plaintiffs' claims for compensatory damages could not be aggregated, but affirmed the district court's ruling that the plaintiffs' claims for injunctive relief, measured with regard to the defendant's cost of compliance, satisfied the jurisdictional minimum and were properly removed. *Id.* at 505. Likewise, in *McCoy v. Erie Insurance Co.*, 147 F. Supp. 2d 481 (S.D. W. Va. 2001),

[3] The approach taken by these courts finds support in decisions by this Court, such as *Gibbs v. Buck*, 307 U.S. 66 (1939). In *Gibbs*, this Court took a pragmatic approach in determining that the interest of members of an association to "conduct their business though the medium of the Society" represented "a common and undivided interest in the matter in controversy in this class suit." 307 U.S. at 73.



the court found that the "'amount in controversy can be satisfied by demonstrating that the injunctive relief would require the defendant to alter his method of doing business in such a manner that would cost at least the statutory minimum.'" *Id.* at 492. The court in *McCoy* stated that it "makes little sense" to "require[] that the amount in controversy be satisfied even after the financial burden to *the defendant* is apportioned to each plaintiff." *Id.* at 494 n.14 (emphasis in original). *See also Steinberg v. Nationwide Mut. Ins. Co.*, 91 F. Supp. 2d 540, 544 (E.D.N.Y. 2000) (in putative class action, valuing injunctive relief from viewpoint of defendant).

The Ninth Circuit's rule improperly makes it more difficult for a class action to be tried in a federal forum. In the instant case, the Ninth Circuit accepted as true the contention that the cost of complying with the injunction sought by plaintiffs in the present case would not materially differ whether that injunction was entered with respect to a single plaintiff or with respect to many plaintiffs (or indeed the entire proposed class) and that even with respect to a single plaintiff the cost of compliance would exceed the jurisdictional amount. In such circumstances in an individual litigation, it is clear that the jurisdictional amount is met. Nothing in this Court's decisions in *Zahn* or *Snyder* requires that the result be different in a class action. Indeed, *Zahn* and *Snyder* applied the same rule to class actions as is applied in individual litigation and thus suggest that, contrary to the Ninth Circuit, the same rules that apply to valuing injunctive relief for purposes of determining the amount in controversy in an individual case — not more restrictive rules — should apply to class actions.

State Farm submits that where a proposed injunction would require a defendant to change its business practices or methods of operation or to take action with reference to the class as a whole, the claim for injunctive relief should be treated as a common and undivided claim. A rule that the defendant's cost of compliance with such an injunction should be included in determining the amount in controversy best reflects the realities both of the collective nature of the relief and the nature and extent of the matter in controversy between the parties.

### C. The Potential for Manipulation of the Value of Injunctive Relief Is Exaggerated by the Ninth Circuit and Does Not Justify the Result in This Case

The chief justification that the Ninth Circuit provides for its rigid rule requiring that the value of injunctive relief must be measured from the plaintiff's viewpoint is that this rule would prevent plaintiffs from manipulating claims for injunctive relief in attempts to manufacture federal diversity jurisdiction. *See Ford*, 264 F.3d at 960-61. The Ninth Circuit's rule is not necessary to achieve this objective. This objective may be best accomplished through the application of established principles of law developed in various contexts to identify sham requests for injunctive relief. For example, when plaintiffs seek injunctive relief that is essentially no more than money damages in "injunctive garb," the amount in controversy may be determined as if only money damages were requested. Thus, in *Campbell v. General Motors Corp.*, the court treated a requested injunction ordering "repair, replacement or refund" as constituting money damages, stating that there is "no meaningful distinction between money damages and in-kind replacement of a defective part." 19 F. Supp. 2d 1260, 1267 (N.D. Ala. 1998); *see also Amerada Hess Corp. v. Department of Interior*, 170 F.3d 1032 (10th Cir. 1999) (claim for injunction ordering refund was a suit for



damages); *Elmco Props., Inc. v. Second Nat'l Fed. Sav. Ass'n*, 94 F.3d 914, 919 n.1 (4th Cir. 1996) (claim for order requiring refund was claim for monetary relief "'dressed in injunctive garb'") (citation omitted).[4]

Likewise, courts have discounted the value of the injunctive relief sought where "[m]ost of the class consists of individuals who do not face further harm" from the defendant's challenged activities. *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 978 (5th Cir. 2000).[5] In short, there is a well developed set of legal principles that can effectively prevent manipulation of the amount of controversy by means of a sham claim for injunctive relief.

The potential for manipulation of the amount in controversy through claims for injunctive relief is also limited by the fact that plaintiffs nowadays frequently file class

---

[4] *Accord Brazos v. Elec. Power Coop., Inc.*, 144 F.3d 784, 786 (Fed. Cir. 1998) (requested injunction to have defendant "correct bookkeeping entry" was really claim for monetary damages of refund or cancellation of debt); *In re Cordis Corp. Pacemaker Prod. Liab. Litig.*, No. MDL 850, C-3-86-543, 1992 WL 754061, at *8-9 (S.D. Ohio Dec. 23, 1992) (claim for injunctive relief in the form of order to replace allegedly defective pacemakers was "an attempt to cast a claim for monetary damages as one for injunctive relief"); *Motorola, Inc. v. Perry*, 917 F. Supp. 43, 46-47 (D.D.C. 1996) (claim for specific performance was "correctly seen as a request for money damages;" "artful pleading" by plaintiffs could not "convert[] a complaint for monetary relief into a complaint for declaratory or injunctive relief").

[5] *Cf. McIntire v. Ford Motor Co.*, 142 F. Supp. 2d 911, 922 (S.D. Ohio 2001) (injunction ordering defendant not to misrepresent that customers were required to participate in informal dispute resolution before litigating warranty claims had no value to named plaintiffs who had all already litigated warranty claims).

actions in state court. *See, e.g.*, John H. Beisner & Jessica Davidson Miller, *They're Making a Federal Case Out of it . . . in State Court*, 25 Harv. J.L. & Pub. Policy 143, 145 (2002) (noting that "class action lawyers are bringing a large number of cases in a small number of state courts that have become 'magnets' for interstate class actions and that thus exercise a wildly disproportionate role in adjudicating national disputes").[6] In cases filed in state court where plaintiffs request injunctive relief, they obviously are not attempting to manipulate the amount in controversy. In such cases, the issue of how to value injunctive relief is raised only if a diverse defendant removes to federal court. Possibilities for manipulation are limited in such cases because the plaintiffs, who are seeking to litigate in state court, have not shaped their request for injunctive relief with a view to obtaining federal jurisdiction.

In attempting to ensure that "small diversity suits" are kept out of federal court, *Ford*, 264 F.3d at 961, the Ninth Circuit has fashioned an inflexible rule that will improperly deprive defendants of a federal forum in cases where substantial amounts of money are at stake because of the broad injunctive relief requested. Moreover, the Ninth Circuit has inappropriately created a special rule for class actions that makes it harder to establish that the jurisdictional amount is satisfied than it is in individual litigation, where the Ninth

[6] For example, "in the courts of six small, rural Alabama counties, at least ninety-one class actions were filed over two-year period, often seeking relief on behalf of purported nationwide classes concerning matters of national significance." Beisner & Miller, 25 Harv. J.L. & Pub. Policy 146. The county court of Madison County, Illinois (with a population of approximately 250,000) has experienced a "disproportionately high volume of class actions filings," with an 1850 percent increase of such filings in 2000. *Id.* at 147.



Circuit permits injunctive relief to be valued from the viewpoint of the defendant. *See id.* at 958. With this special and inflexible rule for class actions, the Ninth Circuit has achieved the perverse result that important national or multi-state class actions, involving claims for injunctive relief that may potentially affect the defendant's ongoing manner of doing business nationwide, are kept out of federal court.

## II. The Ninth Circuit's Ruling Is Counter to Strong Federal Interests in Fostering and Protecting Interstate Commerce

In its professed zeal to protect the federal courts from small lawsuits, the Ninth Circuit has fashioned a rule that ignores the realities of modern class action litigation and the very real costs imposed upon defendants when injunctive relief is granted. Moreover, the Ninth Circuit's decision raises acute federalism concerns, particularly with respect to multi-state or nationwide class actions involving the heavily regulated insurance industry.

Historically, federal "jurisdiction of controversies between citizens of different States of the Union" served the purpose of "secur[ing] a tribunal presumed to be more impartial than a court of the state in which one litigant resides." *Barrow S.S. Co. v. Kane*, 170 U.S. 100, 111 (1898).[7]

[7] *See also* The Federalist No. 80, at 537-38 (Alexander Hamilton) ("[I]n order to ensure the inviolable maintenance of that equality of privileges and immunities to which the citizens of the union will be entitled, the national judiciary ought to preside in all cases in which one state or its citizens are opposed to another state or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction

(Cont'd)

*See also Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792, 797 (11th Cir. 1999) ("An important historical justification for diversity jurisdiction is the reassurance of fairness and competence that a federal court can supply to an out-of-state defendant facing suit in state court"); *Pease v. Peck*, 59 U.S. (18 Howe) 595, 599 (1856) ("The theory upon which jurisdiction is conferred on the courts of the United States, in controversies between citizens of different States, has it foundation in the supposition that, possibly, the State tribunal might not be impartial between their own citizens and foreigners."). As the Eleventh Circuit acknowledged in *Davis*, that historical justification has not vanished. *See Davis*, 182 F.3d at 797 (apologetically remanding class action to "a state court system that has on occasion produced gigantic awards against out-of-state corporate defendants;" stating that "[o]ne would think that this case is exactly what those who espouse the historical justification for § 1332 would have had in mind, and that this fact would somehow color the statute's interpretation").[8]

(Cont'd)
should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different states and their citizens, and which, owing its official existence to the union, will never be likely to feel any bias inauspicious to the principles on which it is founded.").

[8] *See also Davis*, 182 F.3d at 799 (Nangle, J., concurring "under protest") (noting that after remand, "[f]acing the possibility of an Alabama jury which occasionally brings in 'gigantic awards' in cases of this sort (as pointed out by the majority), defendants in this case will be under extreme pressure to settle with the only potential obstacle to settlement being plaintiffs' attorneys fees;" "this Judge is of the opinion that the present case law [on determining the amount in controversy] does not adequately accommodate the reality of modern class action litigation and settlements") (footnote omitted).



Indeed, as the Third Circuit has stated, "[f]rom a policy standpoint, it can be argued that national (interstate) class actions are the paradigm for federal diversity jurisdiction because, in a constitutional sense, they implicate interstate commerce, foreclose discrimination by a local state, and tend to guard against any bias against interstate enterprises." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 305 (3d Cir. 1998).

In the case of multi-state or national class actions, federal diversity jurisdiction also serves the federal interest in regulating interstate commerce and in ensuring that one state's interests do not intrude on other states' interests in regulating conduct within their own borders. Indeed, the issues presented by class action lawsuits against insurance companies raise constitutional concerns fundamental to this country's federal system. When a single state court judge adjudicates the claims of a nationwide class of policyholders, there is substantial risk that the resulting judgment may impinge upon the right of other states to regulate the business of insurance within their borders, especially if the relief ordered includes injunctive relief that will affect the defendant insurer's future operations. In such cases, diversity jurisdiction's "assurance to non-resident litigants of courts free from susceptibility to potential local bias," *Guaranty Trust Co. of N.Y.*, 326 U.S. at 111-12, not only protects the individual litigant, but protects the federal system as well.

State Farm and many other automobile insurance companies have been named as defendants in nationwide or multi-state class actions in which plaintiffs' claims for injunctive relief threaten to impair the divergent interests of different States in regulating insurance transactions within their borders. For example, a number of insurance companies

are defendants in class actions seeking injunctive relief with regard to claims for "diminished value" (i.e., claims that the plaintiffs' cars have a diminished value even after repairs for collision damage). As the court in *McCoy*, 147 F. Supp. 2d at 493, acknowledged, the requested injunctive relief in a "diminished value" case, if granted, would require programmatic changes in a defendant insurance company's operations, necessitating, *inter alia*, substantial expenditures for hiring and training additional employees, additional computer support, and additional claims investigation. Likewise, in *Steinberg*, 91 F. Supp. 2d at 544, a nationwide class action regarding a defendant insurance company's specification of remanufactured parts to repair its insureds' automobiles, the court recognized that the "economic impact" on the defendant of the injunctive relief sought by the plaintiffs would amount to millions of dollars annually.

The obligations of insurance companies with regard to such issues are governed by the varying regulations and laws of the different States. Thus, nationwide or multi-state injunctive relief regarding such issues would not only impose tremendous compliance costs, but would also threaten to expose insurance companies to conflicting legal obligations. Moreover, such sweeping injunctive relief would impair the prerogative of each individual state, guaranteed by this Nation's federal constitutional system, to make its own decisions with respect to the regulation of insurance with its own borders.

Congress has made clear, through the McCarran-Ferguson Act, that "the continued regulation . . . by the *several* States of the business of insurance is in the public interest." 15 U.S.C. § 1011 (emphasis added). Although the McCarran-Ferguson Act is a limitation on federal interference



with the regulation of insurance by the individual states, it is predicated on the principle that each state should regulate insurance transactions within its borders and that no state may regulate extraterritorially. As this Court has explained,

> [i]t is clear [from the legislative history of the Act] that Congress viewed state regulation of insurance solely in terms of regulation by the law of the State where the activity sought to be regulated occurred. *There is no indication of any thought that a State could regulate activities carried on beyond its own borders*.

*Federal Trade Comm'n v. Travelers Health Ass'n*, 362 U.S. 293, 300 (1960) (emphasis added).

In *Travelers*, this Court found it unnecessary to consider the constitutional limitation on one state's efforts to regulate out-of-state insurance transactions of a domiciliary company, but indicated that "the impediments, contingencies, and doubts which constitutional limitations might create" as to a state's "power to regulate any given aspect of extraterritorial activity" confirmed its conclusion that Congress did not intend to authorize such power. *Id.* at 302. Since *Travelers*, however, this Court has repeatedly made clear in other contexts that the principles of state sovereignty embodied in various provisions of the Constitution prohibit states from attempting to regulate transactions occurring outside their borders. *See, e.g., BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568-73 (1996) (Alabama could not impose punitive damages for the purposes of forcing defendant to change its practices in other states); *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (Commerce Clause "precludes the application of a state statute to commerce that takes place

wholly outside of the State's borders"); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 582-83 (1986) (rejecting New York's attempt to "project its legislation" into other states); *Edgar v. MITE Corp.*, 457 U.S. 624, 641-43 (1982) (plurality op.) (Illinois anti-takeover statute impermissibly regulated transaction occurring entirely outside of Illinois); *Bigelow v. Virginia*, 421 U.S. 809, 824 (1975) ("[a] State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State"); *see also New York Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914) ("[i]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State . . . without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful activity and upon which the preservation of which the Government under the Constitution depends.").

Recent studies of insurance-related class action lawsuits filed in state court demonstrate the reality of these constitutional concerns. As commentators noted recently with respect to the numerous class action filings against insurance companies in southern Illinois state courts, "[t]he willingness of certain Illinois state courts to serve as free-roving insurance commissioners and issue edicts that affect the way insurance companies can do business in forty-nine other states may explain why twenty-six class action lawsuits have been filed in Madison County against insurance companies in the last few years." Beisner & Miller, *supra*, at 151. Thus, in one purported nationwide class action brought in Madison County against some twenty insurance companies, "[o]ne Madison County judge could be single-handedly responsible for dramatically increasing the price of automobile insurance for



all Americans and adversely affecting the non-original manufacturer automobile parts industry." *Id.* "The ability of one locally elected judge to exercise that much power raises serious federalism questions." *Id.*

These constitutional concerns underscore the continuing importance of diversity jurisdiction in insurance-related class actions. Moreover, diversity jurisdiction has not decreased in importance with regard to the role it plays in protecting interstate commerce and the national economic system. Rather, diversity jurisdiction has become more important as more companies, such as State Farm, engage in commerce nationwide, and as class action lawsuits more and more often have a significant impact on companies' business operations nationwide. Indeed, as one scholar of the federal court system theorized, the "real key" to the provision by the founders for diversity jurisdiction was their optimistic vision of a future of manufacture and trade within the United States on a vast scale — a future economic order that would both be advanced by the availability of fair federal tribunals and that would have increasing need for such tribunals:

> The real key to the diversity clause lies in the optimism of the founders, an optimism which escapes the label "fantastic" because the dreams so often came true. The members of the Convention did a great deal of anticipating, and on many subjects besides diversity jurisdiction. They anticipated manufacture and trade within the United States on an unknown but vast scale. One of the principal objects of the Convention was to open a path for that expansion. . . . If the Founding Fathers could anticipate the industrial and commercial revolution, already beginning, they could anticipate some of the

> obstacles to the success of the concomitant business enterprise. The diversity clauses were based on that dual anticipation more largely than on experience.

John P. Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Probs. 3, 27 (1948).

The rule adopted by the Ninth Circuit bars defendant companies from federal court in cases where broad injunctive relief is sought that may have substantial monetary impact not only upon the defendant's business operations conducted within the forum state but also upon business operations in other states or nationwide. The Ninth Circuit's ruling relegating such cases to state court disserves the significant federal constitutional interest in adjudicating such cases and should be overturned.

## CONCLUSION

For all the foregoing reasons, *amicus curiae* State Farm respectfully submits that the judgment of the Court of Appeals for the Ninth Circuit in this case should be reversed.

Respectfully submitted,

SHEILA L. BIRNBAUM
*Counsel of Record*
DOUGLAS W. DUNHAM
ELLEN P. QUACKENBOS
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
*Attorneys for Amicus Curiae*
Four Times Square
New York, NY 10036
(212) 735-3000